

CALFRESH (CF) PROGRAM

REQUEST FOR POLICY/REGULATION INTERPRETATION

INSTRUCTIONS: Complete items 1 - 10 on the form. Use a separate form for each policy interpretation request. If additional space is needed, please use the second page. Be sure to identify the additional discussion with the appropriate number and heading. Retain a copy of the CF 24 for your records.

- Questions from counties, including county Quality Control, must be submitted by the county CalFresh Coordinator and may be submitted directly to the CalFresh Policy analyst assigned responsibility for the county, with a copy directed to the appropriate CalFresh Policy unit manager.
- Questions from Administrative Law Judges may be submitted directly to the CalFresh Policy analyst assigned responsibility to the county where the hearing took place, with a copy of the form directed to the appropriate CalFresh Bureau unit manager.

1. RESPONSE NEEDED DUE TO:		5. DATE OF REQUEST:	NEED RESPONSE BY:
<input checked="" type="checkbox"/> Policy/Regulation Interpretation <input type="checkbox"/> QC <input type="checkbox"/> Fair Hearing <input type="checkbox"/> Other:		2/3/2014	asap
2. REQUESTOR NAME:		6. COUNTY/ORGANIZATION:	
Deborah Smaller, ALJ II Specialist		Sonoma	
3. PHONE NO.:		7. SUBJECT:	
629-521-8023		child's RSDI benefits paid to father outside of h/h	
4. REGULATION CITE(S):		8. REFERENCES: (Include ACL/ACIN, court cases, etc. in references)	
63-502.2; Creaton v. Heckler 625 F. Supp 26 (1985)		NOTE: All requests must have a regulation cite(s) and/or a reference(s).	

9. QUESTION: (INCLUDE SCENARIO IF NEEDED FOR CLARITY):

The county determined that the combination of the claimant's earnings and her 12 year old daughter's \$825.00 in RSDI benefits put the h/h over the gross income limit, and discontinued CalFresh benefits, effective August 15, 2013.

The child is receiving residual disability benefits as a result of her father's disability, with the father being her representative payee. Her parents are divorced, they have a 50-50 custody arrangement, and according to the claimant, the father does not make any of the daughter's RSDI available to her to use for the daughter in the claimant's h/h.

The judge determined that the RSDI is countable income to the claimant's h/h, citing Creaton v. Heckler 625 F. Supp. 26, which determined that a child's RSDI benefits should be considered when determining AFDC eligibility, even though no member of the AU actually is the payee of the benefits, and determined that this is equally applicable to the CalFresh (cont).

10. REQUESTOR'S PROPOSED ANSWER:

Program. The judge does not make a factual finding that the father is or is not providing the RSDI benefits to the claimant for the child's use in her h/h. He determines that "His failure to use these RSDI benefits to meet the child's needs arguably subjects him to charges of fiduciary abuse and potential loss of his eligibility to act as the child's representative payee."

In the Creaton court decision, the court states the following: "[T]he statute specifically provides for the inclusion of title II benefits, notwithstanding section 205(j). When title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. Conforming changes in the title II regulations will be published shortly." The questions are the following: (cont)

11. STATE POLICY RESPONSE (CFPB USE ONLY):

The state does not agree with the ALJ's findings. The judge should have not applied the Creaton decision to the CalFresh Program because it only applies to the AFDC program. Per MPP Section 63-402.151(b) when two divorced parents who have 50/50 custody of their child and the child eats a number of meals with each parent, the first custodial parent that applies for CalFresh benefits, may participate with the child. Once that child is part of the CalFresh household, the child is considered to always be a household member of that CalFresh case, even when the child is living with the father 50 percent of the time. The county should have not counted any of the RSDI benefits to the CalFresh household because the mother had provided a written statement stating that she does not have access to the RSDI benefits, even when the child is staying with her. The father is the payee, the RSDI comes in his name, at his address and does not provide access to these benefits to the mother.

FOR CDSS USE

DATE RECEIVED:

February 5, 2014

DATE RESPONDED TO COUNTY/ALJ:

February 20, 2014 (RA)

CALFRESH (CF) PROGRAM REQUEST FOR POLICY/REGULATION INTERPRETATION (Continued)

1. RESPONSE NEEDED DUE TO: <input type="checkbox"/> Policy/Regulation Interpretation <input type="checkbox"/> QC <input type="checkbox"/> Fair Hearing <input type="checkbox"/> Other:	5. DATE OF REQUEST:	NEED RESPONSE BY:
	6. COUNTY/ORGANIZATION:	
	7. SUBJECT:	
2. REQUESTOR NAME:	8. REFERENCES: <i>(Include ACL/ACIN, court cases, etc. in references)</i> NOTE: All requests must have a regulation cite(s) and/or a reference(s).	
3. PHONE NO.:		
4. REGULATION CITE(S):		

1. Is the judge correct to have analogized and applied the Creaton decision to the CalFresh Program?
2. If this court decision does apply to the CalFresh Program, would there not need to be a factual finding that the payee-father did make the child's RSDI available for her support in order to have it be treated as countable income?